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EXAMINER
CARLOS, ALVIN LEABRES

ART UNIT	PAPER NUMBER
4138	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)
	10/528,663	CADMAN, MARK EDWIN
	Examiner	**Art Unit**
	Alvin L. Carlos	4138

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *08 September 2006*.

2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-48* is/are pending in the application.

     4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-48* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *22 March 2005* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

     a)☒ All   b)☐ Some *   c)☐ None of:

        1.☐ Certified copies of the priority documents have been received.

        2.☐ Certified copies of the priority documents have been received in Application No. _____.

        3.☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

     * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
     Paper No(s)/Mail Date *03/22/2005*.

4) ☐ Interview Summary (PTO-413)
     Paper No(s)/Mail Date. _____ .

5) ☐ Notice of Informal Patent Application

6) ☐ Other: _____.

DETAILED ACTION

Claim Objections

1.   Claims 13, 25, 32, 35, 39, 41, 43, 45, 47 are objected to because of the following

informalities: The word "reorganisation" is believed to be in error for --reorganization--

as indicated in the claims. Appropriate correction is required.

Claim Rejections - 35 USC § 102

2.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that

form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3 .   Claims 1-48 are rejected under 35 U.S.C. 102(b) as being anticipated by

Cadman WO 00119393. For the ease of referencing the specific limitations, US

6648651 is used.

Re claim 1, Cadman teaches a method of delivering a test to a candidate

(column 2 line 21), the test having a plurality of questions that are chosen from a

plurality of question types ranging from an easiest question type to a hardest question

type (column 7 lines 5-16). The method comprising of delivering to the candidate a

question selected from the easiest question type and, thereafter, delivering to the

candidate one or more questions from the same question type (column 2 line 23),

delivering to the candidate a question selected from another of the question types

(column 2 line 23), wherein at least one question is a "Swaps" question, the "Swaps"

question comprising displaying a plurality of images to the candidate in a predetermined

spatial relationship and an instruction sequence associated with the images for

indicating to the candidate a required reorganization of the spatial relationship of the

images (column 8 lines 9-27).

Re claim 2, Cadman teaches the test comprising question types 1, 2, . . . , n,

where type 1 is the easiest question type and type n is the hardest question type

(column 3 lines 31-32), sequentially delivering all the questions of a given question type

to the candidate and sequentially delivering to the candidate the question types in the

order of question type 1 to question type n (column 2 lines 46-47).

Re claim 3, Cadman teaches the candidate only delivered a question when a

preceding question in the sequential delivery has been answered (column 8 lines 19-

21).

Re claim 4, Cadman teaches upon answering a question, asking the candidate to

indicate his or her confidence that the answer to the question was correct (column 2

lines 26-27).

Re claim 5, Cadman teaches the candidate asked to indicate his or her

confidence that the answer to the question was within one of two or more confidence

bands (column 2 lines 50-52).

Re claim 6, Cadman teaches the test delivered by a testing device that

comprising a display for visually displaying a question to the candidate (column 3 lines

20-21), an input device for allowing the candidate to answer the question (column 3

lines 22-24), and a processor for driving the display and for being responsive to the

input device for determining the answer provided by the candidate (column 3 lines 17-18).

Re claim 7, Cadman teaches the test contained as question data on a storage medium (column 8 lines 8-9), the processor selectively accesses the question data to deliver the questions sequentially (column 3 lines 29-30). Cadman does not explicitly discuss a storage medium, however, a storage medium is inherent in the computer system to store, retrieve and use a computer program. Furthermore, a storage medium is inherent in the computer system to provide the above-discussed functions.

Re claim 8, Cadman teaches the storage medium comprising sequence data representative of the sequence in which the question data is accessed by the processor (column 8 lines 8-9). Cadman does not explicitly discuss a storage medium, however, a storage medium is inherent in the computer system to store, retrieve and use a computer program. Furthermore, a storage medium is inherent in the computer system to provide the above-discussed functions.

Re claim 9, Cadman teaches the storage medium controlled by a server that is remote from the processor and which is responsive to predetermined input from the processor for allowing the test to be delivered to the candidate (column 10 lines 27-31). Cadman does not explicitly discuss a storage medium, however, a storage medium is inherent in the computer system to store, retrieve and use a computer program. Furthermore, a storage medium is inherent in the computer system to provide the above-discussed functions.

Re claim 10, Cadman teaches the method further comprising recording the time taken for the candidate to read and answer a question (column 8 lines 27-28).

Re claim 11, Cadman teaches the method further comprising recording the time taken by the candidate to indicate their confidence (column 8 lines 29-31).

Re claim 12, Cadman teaches the method further comprising the step of assessing the relative cognitive ability of the candidate based upon a consideration of any one or more of: correctness of some or all of the answers provided by the candidate, time taken to provide those answers (column 3 lines 45-51), and the relationship between the correctness of some or all the answers and confidence indicated by the candidate that his or her answers to the question questions were correct (column 3 lines 59-67).

Re claim 13, Cadman teaches the apparatus comprising a display for sequentially displaying to the candidate questions selected from the easiest question type (column 3 lines 20-22), input means for allowing the candidate to answer the questions and for triggering the display to display to the candidate the next question in the sequence or, if at the end of the sequence, one or more questions from the next hardest question type (column 3 lines 22-24), wherein at least one question is a "Swaps" question, the "Swaps" question comprising a plurality of images displayed in a predetermined spatial relationship (column 8 lines 9-13), and an instruction sequence associated with the images for indicating to the candidate a required reorganisation of the spatial relationship of the images (column 8 lines 13-19).

Re claim 14, Cadman teaches the input means allows the candidate to indicate his or her confidence that the answer to the question was correct (column 3 lines 35-44).

Re claim 15, Cadman teaches the input means allows the candidate to indicate his or her confidence that the answer to the question was within one of two or more confidence bands (column 4 lines 22-26).

Re claim 16, Cadman teaches the storage medium on which the test is stored as question data (column 8 lines 8-9), and a processor adapted to selectively access the question data to deliver the questions sequentially (column 3 lines 29-30). Cadman does not explicitly discuss a storage medium, however, a storage medium is inherent in the computer system to store, retrieve and use a computer program. Furthermore, a storage medium is inherent in the computer system to provide the above-discussed functions.

Re claim 17, Cadman teaches the storage medium comprising sequence data representative of the sequence in which the question data is accessed by the processor (column 8 lines 8-9). Cadman does not explicitly discuss a storage medium, however, a storage medium is inherent in the computer system to store, retrieve and use a computer program. Furthermore, a storage medium is inherent in the computer system to provide the above-discussed functions.

Re claim 18, Cadman teaches the storage medium controlled by a server that is remote from the processor and which is responsive to predetermined input from the processor for allowing the test to be delivered to the candidate (column 10 lines 27-31).

Cadman does not explicitly discuss a storage medium, however, a storage medium is inherent in the computer system to store, retrieve and use a computer program. Furthermore, a storage medium is inherent in the computer system to provide the above-discussed functions.

Re claim 19, Cadman teaches timing means to record the time taken for the candidate to read and answer a question (column 3 lines 25-28).

Re claim 20, Cadman teaches a processor for assessing the relative cognitive ability of the candidate based upon a consideration of any one or more of: correctness of some or all of the answers provided by the candidate, time taken to provide those answers (column 3 lines 45-51), and the relationship between the correctness of some or all the answers and confidence indicated by the candidate that his or her answers to the questions were correct (column 3 lines 59-67).

Re claim 21, Cadman teaches a method of assessing the relative cognitive ability of a candidate (column 5 lines 4-15), assessment having a plurality of questions that are chosen from a plurality of question types ranging progressively from an easiest question type to a hardest question type (column 3 lines 52-54). The method comprising delivering to the candidate a question selected from the easiest question type (column 3 lines 29-31), allowing the candidate to answer the question and, thereafter, delivering to the candidate sequentially one or more questions from the same question type (column 3 lines 32-35), determining a quantifier in response to the answers provided by the candidate to the questions of the easiest question type (column 4 lines 1-21), if the quantifier is above a predetermined threshold for delivering to the candidate a question

selected from another one of the question types, delivering to the candidate a question

selected from the other one of the question types and, thereafter, delivering to the

candidate one or more questions from the same other one of the question types

(column 4 lines 22-35, table 5),and deriving an assessment of the relative cognitive

ability of a candidate using the quantifier and the question types for which answers have

been provided (column 4 lines 53-63).

Re claim 22, Cadman teaches the other one of the question types is the next

question type in the progressive range of question types (column 8 lines 21-24).

Re claim 23, Cadman teaches the method comprising determining a second

quantifier in response to the answers provided by the candidate to the questions of the

other one of the question types (column 4 lines 44-46).

Re claim 24, Cadman teaches the second quantifier above a predetermined

second threshold for delivering to the candidate a question selected from the next

question type in the progression of question types (column 4 lines 10-21). The method

further comprising the steps of delivering to the candidate a question selected from the

next question type and thereafter, delivering to the candidate one or more questions

from the same next question type (column 3 lines 29-32).

Re claim 25, Cadman teaches at least one question is a "Swaps" question, the

"Swaps" question comprising a plurality of images displayed in a predetermined spatial

relationship and an instruction sequence associated with the images for indicating to the

candidate a required reorganisation of the spatial relationship of the images (column 8

lines 9-27).

Re claim 26, Cadman teaches quantifier determined upon a consideration of any one or more of: correctness of some or all of the answers provided by the candidate, time taken to provide those answers (column 3 lines 45-51), and the relationship between the correctness of some or all the answers and confidence indicated by the candidate that his or her answers to the questions were correct (column 3 lines 59-67).

Re claim 27, Cadman teaches the apparatus comprising: a processor for driving a display to deliver to the candidate a question selected from the easiest question type (column 3 lines 29-30), an input device for allowing the candidate to answer the question, wherein the processor is responsive to the answer being provided to subsequently deliver to the candidate sequentially one or more questions from the same question type (column 3 lines 22-24), a calculation module being responsive to the answers provided by the candidate to the questions of the easiest question type for determining a quantifier (column 4 lines 47-55), and an assessment module responsive to the quantifier and the question types for which answers have been provided to derive an assessment of the relative cognitive ability of a candidate (column 4 lines 64-67 and column 5 lines 1-3).

Re claim 28, Cadman teaches the other one of the question types is the next question type in the progressive range of question types (column 8 lines 21-24).

Re claim 29, Cadman teaches the calculation module further determines a second quantifier in response to the answers provided by the candidate to the questions of the other one of the question types (column 4 lines 47-55).

Re claim 30, Cadman teaches the processor responsive to the second quantifier being above a predetermined second threshold for driving the display to deliver to the candidate a question selected from the next question type in the progression of question types, and thereafter, delivering to the candidate one or more questions from the same next question type (column 3 lines 29-35).

Re claim 31, Cadman teaches the calculation module determines the quantifier based upon any one or more of: correctness of some or all of the answers provided by the candidate, time taken to provide those answers (column 3 lines 45-51), and the relationship between the correctness of some or all the answers and confidence indicated by the candidate that his or her answers to the questions were correct (column 3 lines 59-67).

Re claim 32, Cadman teaches at least one question is a "Swaps" question, the "Swaps" question comprising a plurality of images displayed in a predetermined spatial relationship and an instruction sequence associated with the images for indicating to the candidate a required reorganisation of the spatial relationship of the images (column 8 lines 9-27).

Re claim 33, Cadman teaches a method of assessing progress of a candidate in response to a learning program, the assessment having a plurality of questions that are chosen from a plurality of question types ranging progressively from an easiest question type to a hardest question type (column 3 lines 52-54). The method comprising delivering to the candidate a question selected from the easiest question type (column 8 lines 9-11), allowing the candidate to answer the question and, thereafter, delivering to

the candidate sequentially one or more questions from the same question type in

response to the preceding question being answered (column 8 lines 11-12), determining

a quantifier in response to the answers provided by the candidate to the questions of

the easiest question type (column 8 lines 28-31), if the quantifier is above a

predetermined threshold for delivering to the candidate a question selected from

another one of the question types, delivering to the candidate a question selected from

the other one of the question types and, thereafter, delivering to the candidate one or

more questions from the other one of the question types (column 4 lines 22-35, table 5),

and deriving an assessment of the relative cognitive ability of a candidate using the

quantifier and the question types for which answers have been provided (column 10

lines 21-24).

Re claim 34, Cadman teaches the quantifier determined upon a consideration of

any one or more of: correctness of some or all of the answers provided by the

candidate, time taken to provide those answers (column 8 lines 27-28), and the

relationship between the correctness of some or all the answers and confidence

indicated by the candidate that his or her answers to the questions were correct (column

3 lines 59-67).

Re claim 35, Cadman teaches at least one question is a "Swaps" question, the

"Swaps" question comprising displaying a plurality of images to the candidate in a

spatial relationship and an instruction sequence associated with the images for

indicating to the candidate a required reorganisation of the spatial relationship of the

images (column 8 lines 9-27).

Re claim 36, Cadman teaches the "Swaps" question has three images that are clearly visually distinct (column 8 lines 12-14).

Re claim 37, Cadman teaches to answer the "Swaps" question, the candidate clicks and drags the images to the spatial locations that are believed to be correct (column 8 lines 14-17).

Re claim 38, Cadman teaches a plurality of alternative answers to the "Swaps" question is displayed to the candidate, and the candidate selects one of the alternatives (column 8 lines 20-21).

Re claim 39, Cadman teaches all the questions are "Swaps" questions and the instruction sequence of each question in a particular question type includes the same number of swap instructions requiring the spatial reorganisation of two images (column 8 lines 26-27).

Re claim 40, Cadman teaches the harder the question type, the larger the number of swaps instructions are included in the instruction sequence (column 8 lines 22-25).

Re claim 41, Cadman teaches all the questions are "Swaps" questions and the instruction sequence of each question in a particular question type includes the same number of swap instructions requiring the spatial reorganisation of two images (column 8 lines 9-27).

Re claim 42, Cadman teaches the harder the question type, the larger the number of swaps instructions are included in the instruction sequence (column 8 lines 22-25).

Re claim 43, Cadman teaches all the questions are "Swaps" questions and the instruction sequence of each question in a particular question type includes the same number of swap instructions requiring the spatial reorganisation of two images (column 8 lines 9-27).

Re claim 44, Cadman teaches the harder the question type, the larger the number of swaps instructions are included in the instruction sequence (column 8 lines 22-25).

Re claim 45, Cadman teaches all the questions are "Swaps" questions and the instruction sequence of each question in a particular question type includes the same number of swap instructions requiring the spatial reorganisation of two images (column 8 lines 9-27).

Re claim 46, Cadman teaches the harder the question type, the larger the number of swaps instructions are included in the instruction sequence (column 8 lines 22-25).

Re claim 47, Cadman teaches all the questions are "Swaps" questions and the instruction sequence of each question in a particular question type includes the same number of swap instructions requiring the spatial reorganisation of two images (column 8 lines 9-27).

Re claim 48, Cadman teaches the harder the question type, the larger the number of swaps instructions are included in the instruction sequence (column 8 lines 22-25).

Double Patenting

4.   The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees.   A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

        A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of   activities undertaken within the scope of a joint research agreement.

        Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

5.   Claims 1-12, 36-40 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 13-15 and 17-19 of U.S. Patent No. 6648651. Although the conflicting claims are not identical, they are not patentably distinct from each other because of the following reason:

        Present claim 1 is obvious over prior art claims 13-15 considering the claimed test having a plurality of questions that are chosen from a plurality of question types ranging from an easiest question type to a hardest question type as discussed over the prior art (column 7 lines 5-16). Furthermore, a question selected from another of the question types and, thereafter, delivering to the candidate one or more questions from

the same question type and at least one question is a "Swaps" question, wherein the

"Swaps" question comprising displaying a plurality of images to the candidate in a

predetermined spatial relationship and an instruction sequence associated with the

images for indicating to the candidate a required reorganization of the spatial

relationship of the images were equally obvious as discussed over the prior art (column

8 lines 9-27).

Present claims 2-4 are obvious over prior art claims 13-15.

Present claim 5 is obvious over prior art claims 13 and 17.

Present claim 6 is obvious over prior art claim 1.

Present claims 7 and 8 are obvious over prior art claims 1 and 13 considering the

claimed storage medium and a processor were a well-known expedient in the art

(column 8 lines 8-9).

Present claim 9 is obvious over prior art claims 1, 12 and 13 considering the

claimed storage medium controlled by a server was a well-known expedient in the art

(column 10 lines 27-31).

Present claim 10 is obvious over prior art claims 13 and 14.

Present claim 11 is obvious over prior art claims 13 and 18.

Present claims 12, 36-40 are obvious over prior art claims 13-15 and 17-19.

6.   Claims 13-20, 41-42 are rejected on the ground of nonstatutory obviousness-type

double patenting as being unpatentable over claims 1-2, 13-15, 17-18 of U.S. Patent

No. 6648651. Although the conflicting claims are not identical, they are not patentably distinct from each other because of the following reason:

Present claims 13-15 are obvious over prior art claim 1 considering question is a "Swaps" question was obvious as discussed over the prior art (column 8 lines 9-27).

Present claims 16-17, 20 are obvious over prior art claim 1 considering the claimed storage medium and a processor were a well-known expedient in the art (column 8 lines 8-9).

Present claim 18 is obvious over prior art claim 1 considering the claimed storage medium controlled by a server was a well-known expedient in the art (column 10 lines 27-31).

Present claim 19 is obvious over prior art claims 1 and 2.

Present claims 41 and 42 are obvious over prior art claims 1, 13-15, 17-18.

7.   Claims 21-26, 43-44 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 13-15, 17-19 of U.S. Patent No. 6648651. Although the conflicting claims are not identical, they are not patentably distinct from each other because of the following reason:

Present claims 21-26, 43-44 are obvious over prior art claims 13-15 and 17-19 considering the quantifier is above a predetermined threshold, determining a second quantifier in response to the answers, question is a "Swaps" question were equally obvious as discussed over the prior art (column 8 lines 9-27).

8.   Claims 27-32, 45-46 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-2, 13-15, 17-19 of U.S. Patent No. 6648651. Although the conflicting claims are not identical, they are not patentably distinct from each other because of the following reason:

Present claims 27-32, 45-46 are obvious over prior art claims 1-2, 13-15 and 17-19 considering a processor, a calculation module and an assessment module was a well-known expedient in the art to provide the desired result.

9.   Claims 33-35, 47-48 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 13-15, 17-19 of U.S. Patent No. 6648651. Although the conflicting claims are not identical, they are not patentably distinct from each other because of the following reason:

Present claims 33-35, 47-48 are obvious over prior art claims 13-15 and 17-19.

Conclusion

10.   The prior art made of record and not relied upon is considered pertinent to applicant's disclosure as per the attached Notice of References Cited.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alvin L. Carlos whose telephone number is 571-2703077. The examiner can normally be reached on 7:30am-5:00pm EST Mon-Fri. (alternate Friday off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Ehud Gartenberg can be reached on 571-2724828. The fax phone number

for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the

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published applications may be obtained from either Private PAIR or Public PAIR.

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For more information about the PAIR system, see http://pair-direct.uspto.gov. Should

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USPTO Customer Service Representative or access to the automated information

system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

AG
10/12/2007

EHUD GARTENBERG
SUPERVISORY PATENT EXAMINER

10/12/07